

**LICENSING - INSURANCE LAW  
AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

---

**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to address provisions related to licensing.

**Highlighted Provisions:**

This bill:

- modifies definitions;
- modifies provisions related to initial and renewal applications for licensure;
- modifies cross references;
- repeals certain reporting requirements for appointments in the state;
- requires a producer to have experience with property and casualty lines of authority to be eligible to add surplus lines of authority;
- modifies reporting requirements for agency designations;
- repeals the commissioner's authority to issue a single license to each licensed adjustor for a single fee;
- modifies time for retention of records;
- provides that certain records are private records; and
- makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

**31A-23a-102**, as renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-23a-104**, as last amended by Chapter 252 and renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-23a-105**, as last amended by Chapter 81 and renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-23a-111**, as renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-23a-113**, as enacted by Chapter 298, Laws of Utah 2003

**31A-23a-115**, as enacted by Chapter 298, Laws of Utah 2003

**31A-23a-203**, as renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-23a-302**, as renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-26-209**, as last amended by Chapter 116, Laws of Utah 2001

**31A-26-306**, as last amended by Chapter 230, Laws of Utah 1992

**31A-35-101**, as last amended by Chapter 259, Laws of Utah 2000

**63-2-302**, as last amended by Chapters 39, 252 and 298, Laws of Utah 2003

**77-20-10**, as last amended by Chapter 259, Laws of Utah 2000

---

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **31A-23a-102** is amended to read:

**31A-23a-102. Definitions.**

As used in this chapter:

(1) "Bail bond producer" means a person who:

(a) is appointed by:

(i) a surety insurer that issues bail bonds; or

(ii) a bail bond surety company licensed under Chapter 35, Bail Bond Act;

(b) is designated to execute or countersign undertakings of bail in connection with judicial proceedings; and

(c) receives or is promised money or other things of value for engaging in an act described in Subsection (1)(b).

(2) "Escrow" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to conduct escrow as defined in Section 31A-1-301.

(3) "Home state" means any state or territory of the United States or the District of Columbia in which an insurance producer:

(a) maintains the insurance producer's principal:

(i) place of residence; or

(ii) place of business; and

(b) is licensed to act as an insurance producer.

(4) "Insurer" is as defined in Section 31A-1-301, except the following persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

(a) all risk retention groups as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) Chapter 15, Part II, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers.

(5) "License" is defined in Section 31A-1-301.

(6) (a) "Managing general agent" means any person~~[, firm, association, or corporation]~~ that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; and

(iv) (A) adjusts or pays claims in excess of an amount determined by the commissioner; or

(B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (6)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a United States manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(7) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in that act:

(a) sells insurance; or

(b) obtains insurance from insurers for purchasers.

(8) "Reinsurance intermediary" means:

(a) a reinsurance intermediary-broker; or

(b) a reinsurance intermediary-manager [~~as these terms are defined in Subsections (9) and (10)~~].

(9) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(10) (a) "Reinsurance intermediary-manager" means a person~~[, firm, association, or corporation]~~ who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person~~[, firm, association, or corporation]~~ is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (10)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a United States manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(11) "Search" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(12) "Sell" means to exchange a contract of insurance:

(a) by any means;

- (b) for money or its equivalent; and
- (c) on behalf of an insurance company.

(13) "Solicit" means:

- (a) attempting to sell~~[:]~~ insurance;
- (b) asking or urging a person to apply for:
- ~~[(a)]~~ (i) a particular kind of insurance; and
- ~~[(b)]~~ (ii) insurance from a particular insurance company~~[-]~~;
- (c) advertising insurance, including advertising for the purpose of obtaining leads for the sale of insurance; or
- (d) holding oneself out as being in the insurance business.

(14) "Terminate" means:

- (a) the cancellation of the relationship between:
  - (i) an insurance producer; and
  - (ii) a particular insurer; or
- (b) the termination of the producer's authority to transact insurance on behalf of a particular insurance company.

(15) "Title marketing representative" means a person who:

- (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:
  - (i) title insurance; or
  - (ii) escrow services; and
- (b) does not have a search or escrow license as provided in Section 31A-23a-106.

(16) "Uniform application" means the version of the National Association of Insurance Commissioner's uniform application for resident and nonresident producer licensing at the time the application is filed.

(17) "Uniform business entity application" means the version of the National Association of Insurance Commissioner's uniform business entity application for resident and nonresident business entities at the time the application is filed.

Section 2. Section **31A-23a-104** is amended to read:

**31A-23a-104. Application for individual license -- Application for agency license.**

- (1) ~~[(a)]~~ Subject to Subsection (2), an application for an initial or renewal individual

license as a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary shall be:

~~[(+)]~~ (a) made to the commissioner on forms and in a manner the commissioner prescribes; and

~~[(+)]~~ (b) accompanied by a license fee that is not refunded if the application:

(i) is denied; or

(ii) if incomplete, is never completed by the applicant.

~~[(b) Nonresident individual producer applicants may use the National Association of Insurance Commissioners Uniform Application for Individual Nonresident License.]~~

(2) An application described in Subsection (1)~~[(a)]~~ shall provide:

(a) information about the applicant's identity;

(b) the applicant's Social Security number;

(c) the applicant's personal history, experience, education, and business record;

(d) whether the applicant is 18 years of age or older;

(e) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

(f) any other information the commissioner reasonably requires.

(3) The commissioner may require any documents reasonably necessary to verify the information contained in an application filed under this section.

(4) The following information contained in an application filed under this section is a private record under Title 63, Chapter 2, Government Records Access and Management Act:

(a) an applicant's Social Security number; or

(b) an applicant's federal employer identification number.

(5) (a) Subject to Subsection (5)~~[(e)]~~(b), an application for an initial or renewal agency license as a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary shall be:

(i) made to the commissioner on forms and in a manner the commissioner prescribes; and

(ii) accompanied by a license fee that is not refunded if the application:

(A) is denied; or

(B) if incomplete, is never completed by the applicant.

~~[(b) Nonresident producer agency applicants may use the National Association of Insurance Commissioners Uniform Application for Business Entity Nonresident License/Registration.]~~

~~[(e)]~~ (b) An application described in Subsection (5)(a) shall provide:

- (i) information about the applicant's identity;
- (ii) the applicant's federal employer identification number;
- (iii) the designated responsible licensed producer;
- (iv) the identity of all owners, partners, officers, and directors;
- (v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and
- (vi) any other information the commissioner reasonably requires.

~~[(d) The commissioner may require any documents reasonably necessary to verify the information contained in an application.]~~

~~[(e) An applicant's federal employer identification number is a private record under Title 63, Chapter 2, Government Records Access and Management Act.]~~

Section 3. Section **31A-23a-105** is amended to read:

**31A-23a-105. General requirements for individual and agency license issuance and renewal.**

(1) The commissioner shall issue or renew a license to act as a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary to any person who, as to the license type and line of authority classification applied for under Section 31A-23a-106:

(a) has satisfied the application requirements under Section 31A-23a-104;

~~[(a)]~~ (b) has satisfied the character requirements under Section 31A-23a-107;

~~[(b)]~~ (c) has satisfied any applicable continuing education requirements under Section 31A-23a-202;

~~[(e)]~~ (d) has satisfied any applicable examination requirements under Section 31A-23a-108;

~~[(d)]~~ (e) has satisfied any applicable training period requirements under Section 31A-23a-203;



~~[(e)]~~ (f) if a nonresident:

(i) has complied with Section 31A-23a-109; and

(ii) holds an active similar license in that person's state of residence;

~~[(f)]~~ (g) if an applicant for a title insurance producer license, has satisfied the requirements of Sections 31A-23a-203 and 31A-23a-204;

~~[(g)]~~ (h) if an applicant for a license to act as a provider or producer of viatical settlements, has satisfied the requirements of Section 31A-23a-117; and

~~[(h)]~~ (i) has paid the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for a pending individual or agency producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary license; or

(ii) a licensed individual or agency producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) any administrative action taken against the person:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) any criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person files the application for an individual or agency license; or

(B) within 30 days of the initiation of an action or prosecution described in Subsection (2)(b); and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-23a-107 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-23a-107; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).

(4) To become a resident licensee in accordance with Section 31A-23a-104 and this section, a person licensed as an insurance producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary in another state who moves to this state shall apply within 90 days of establishing legal residence in this state.

Section 4. Section **31A-23a-111** is amended to read:

**31A-23a-111. Revocation, suspension, surrender, lapsing, or limiting of license.**

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (4);

(b) surrendered to and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

- (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;
- (d) lapsed under Section 31A-23a-113; or
- (e) voluntarily surrendered.
- (2) Lapsed or voluntarily surrendered licenses may be reinstated during the current license period.
- (3) A line of authority issued under this chapter remains in force until:
  - (a) the qualifications pertaining to a line of authority are no longer met by the licensee;or
  - (b) the supporting license type is revoked or suspended under Subsection (4) or voluntarily surrendered.
- (4) (a) If the commissioner makes a finding under Subsection (4)(b), after an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may:
  - (i) revoke:
    - (A) a license; or
    - (B) a line of authority;
  - (ii) suspend for a specified period of 12 months or less:
    - (A) a license; or
    - (B) a line of authority; or
  - (iii) limit in whole or in part:
    - (A) a license; or
    - (B) a line of authority.
- (b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:
  - (i) is unqualified for a license or line of authority under Sections 31A-23a-104 and 31A-23a-105;
  - (ii) has violated:
    - (A) an insurance statute;
    - (B) a rule that is valid under Subsection 31A-2-201(3); or

- (C) an order that is valid under Subsection 31A-2-201(4);
- (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;
- (iv) fails to pay any final judgment rendered against the person in this state within 60 days after the day the judgment became final;
- (v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;
- (vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;
- (vii) refuses;
  - (A) to be examined; or
  - (B) to produce its accounts, records, and files for examination;
- (viii) has an officer who refuses to:
  - (A) give information with respect to the administrator's affairs; or
  - (B) perform any other legal obligation as to an examination;
- (ix) provided information in the license application that is:
  - (A) incorrect;
  - (B) misleading;
  - (C) incomplete; or
  - (D) materially untrue;
- (x) has violated any insurance law, valid rule, or valid order of another state's insurance department;
- (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- (xii) has improperly withheld, misappropriated, or converted any monies or properties received in the course of doing insurance business;
- (xiii) has intentionally misrepresented the terms of an actual or proposed:
  - (A) insurance contract; or
  - (B) application for insurance;
- (xiv) has been convicted of a felony;
- (xv) has admitted or been found to have committed any insurance unfair trade practice or fraud;

- (xvi) in the conduct of business in this state or elsewhere has:
    - (A) used fraudulent, coercive, or dishonest practices; or
    - (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
  - (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
  - (xviii) has forged another's name to:
    - (A) an application for insurance; or
    - (B) any document related to an insurance transaction;
  - (xix) has improperly used notes or any other reference material to complete an examination for an insurance license;
  - (xx) has knowingly accepted insurance business from an individual who is not licensed;
  - (xxi) has failed to comply with an administrative or court order imposing a child support obligation;
  - (xxii) has failed to:
    - (A) pay state income tax; or
    - (B) comply with any administrative or court order directing payment of state income tax;
  - (xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or
  - (xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.
- (c) For purposes of this section, if a license is held by an agency, both the agency itself and any natural person named on the license are considered to be the holders of the license.
- (d) If a natural person named on the agency license commits any act or fails to perform any duty that is a ground for suspending, revoking, or limiting the natural person's license, the commissioner may suspend, revoke, or limit the license of:
- (i) the natural person;
  - (ii) the agency, if the agency:
    - (A) is reckless or negligent in its supervision of the natural person; or
    - (B) knowingly participated in the act or failure to act that is the ground for suspending,

revoking, or limiting the license; or

(iii) (A) the natural person; and

(B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

(5) A licensee under this chapter [~~whose license is revoked, suspended, limited, surrendered in lieu of administrative action, lapsed, or voluntarily surrendered, who continues to act as a licensee or violates the terms of the license limitation,~~] is subject to the penalties for acting as a licensee without a license[-] if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(6) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in any other state, District of Columbia, or territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, District of Columbia, or territory of the United States; and

(c) a judgment or injunction entered against that person on the basis of conduct involving:

(i) fraud[-];

(ii) deceit[-];

(iii) misrepresentation[-]; or

(iv) a violation of an insurance law or rule.

(7) (a) An order revoking a license under Subsection (4) may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order revoking a license under Subsection (4), the former licensee may not apply for a new license for five years without express approval by the

commissioner.

(8) The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

Section 5. Section **31A-23a-113** is amended to read:

**31A-23a-113. License lapse and voluntary surrender.**

(1) (a) A license issued under this chapter shall lapse if the licensee fails:

(i) to pay when due a fee under Section 31A-3-103;

(ii) to complete continuing education requirements under Section 31A-23a-202 before submitting the license renewal application;

(iii) to submit a completed renewal application as required by Section 31A-23a-104 [~~or 31A-23a-302~~]; or

(iv) to submit additional documentation required to complete the licensing process as related to a specific license type or line of authority.

(b) A licensee whose license lapses due to military service or some other extenuating circumstances such as long-term medical disability may request:

(i) reinstatement of the license; and

(ii) waiver of any of the following imposed for failure to comply with renewal procedures:

(A) an examination requirement;

(B) reinstatement fees; or

(C) other sanction imposed for failure to comply with renewal procedures.

(2) If a license type or line of authority issued under this chapter is voluntarily surrendered, the license or line of authority may be reinstated during the current license period.

(3) The commissioner shall by rule prescribe the license renewal and reinstatement procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 6. Section **31A-23a-115** is amended to read:

**31A-23a-115. Appointment and listing of individual and agency insurance producer, limited line producer, or managing general agent.**

(1) (a) An insurer shall appoint a natural person or agency that has an insurance producer, limited line producer, or managing general agent license to act as an insurance producer, limited line producer, or managing general agent on its behalf prior to any producer, limited line producer, or managing general agent doing business for the insurer in this state.

(b) ~~[All insurers]~~ An insurer shall report to the commissioner, at intervals and in the form the commissioner establishes by rule<sup>5</sup>:

(i) all new appointments; and

(ii) all terminations of appointments.

~~[(c) All insurers shall submit to the commissioner on or before July 1 of each odd-numbered year a list of all appointments then in force in this state.]~~

(2) (a) (i) An insurer shall report to the commissioner the cause of termination of an appointment.

(ii) The information provided to the commissioner under this Subsection (2) is a private record under Title 63, Chapter 2, Government Records Access and Management Act.

(b) An insurer is immune from civil action, civil penalty, or damages if the insurer complies in good faith with this Subsection (2) in reporting to the commissioner the cause of termination of an appointment.

(c) Notwithstanding any other provision in this section, an insurer is not immune from any action or resulting penalty imposed on the reporting insurer as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection (2).

(3) If an insurer appoints an agency, the insurer need not appoint, report, or pay appointment reporting fees for natural persons designated on the agency's license under Section 31A-23a-302.

(4) (a) Each insurer shall maintain with the department a list of natural persons with authority to appoint and remove the company's producers, limited line producers, or managing general agents in this state on forms:

(i) supplied by the department; and

(ii) signed by any officer of the insurer.

(b) The insurer shall submit the list required under Subsection (4)(a) to the commissioner pursuant to Subsection (1).



(5) If an insurer lists a licensee in reports submitted under Subsection (2), there is a rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of the licensee's licensed employees acted on behalf of the insurer.

Section 7. Section **31A-23a-203** is amended to read:

**31A-23a-203. Training period requirements.**

(1) A producer is eligible to add the surplus lines of authority to the person's producer's license if the producer:

(a) has passed the applicable examination;

(b) has been a producer with property and casualty lines of authority for at least three years during the four years immediately preceding the date of application; and

(c) has paid the applicable fee under Section [~~31A-3-303~~] 31A-3-103.

(2) A person is eligible to become a consultant only if the person has acted in a capacity that would provide the person with preparation to act as an insurance consultant for a period aggregating not less than three years during the four years immediately preceding the date of application.

(3) A title producer is eligible to become a title agency only if the title producer has been licensed as a title producer in the search and escrow categories for at least three years during the four years immediately preceding the date of application.

(4) The training periods required under this section apply only to natural persons applying for licenses under this chapter.

Section 8. Section **31A-23a-302** is amended to read:

**31A-23a-302. Agency designations.**

(1) An agency shall designate a natural person that has a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary license to act on its behalf prior to the licensee doing business for the agency.

(2) An agency shall report to the commissioner, at intervals and in the form the commissioner establishes by rule[~~5~~];

(a) all new designations~~[-all renewed designations,];~~ and

(b) all terminated designations.

(3) (a) An agency licensed under this chapter shall report to the commissioner the cause of termination of a designation.

(b) The information provided the commissioner under Subsection (3)(a) ~~[shall remain confidential]~~ is a private record under Title 63, Chapter 2, Government Records Access and Management Act.

(c) An agency is immune from civil action, civil penalty, or damages if the agency complies in good faith with this Subsection (3) in reporting to the commissioner the cause of termination of a designation.

(d) Notwithstanding any other provision in this section, an agency is not immune from any action or resulting penalty imposed on the reporting agency as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection (3).

(4) An agency licensed under this chapter may act in the capacities for which it is licensed only through natural persons who are licensed under this chapter to act in the same capacities.

(5) An agency licensed under this chapter shall report to the commissioner by rule the name of at least one natural person who has authority to act on behalf of the agency in all matters pertaining to compliance with this title and orders of the commissioner.

(6) If an agency designates a licensee in reports submitted under Subsection (2), there is a rebuttable presumption that the designated licensee acted on behalf of the agency.

Section 9. Section **31A-26-209** is amended to read:

**31A-26-209. Form and contents of license.**

(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

(a) the name, address, and telephone number of the licensee;

(b) the license classifications under Section 31A-26-204;

(c) the date of license issuance; and

(d) any other information the commissioner considers advisable.

(2) An adjuster doing business under any other name than the adjuster's legal name shall notify the commissioner prior to using the assumed name in this state.

(3) (a) An organization shall be licensed as an agency if the organization acts as:

- (i) an independent adjuster; or
- (ii) a public adjuster.

(b) The agency license issued under Subsection (3)(a) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the organization in this state.

~~[(4) (a) So far as is practicable, the commissioner shall issue a single license to each licensed adjuster for a single fee.]~~

~~[(b) For fee purposes, the less expensive license is included within the most expensive license.]~~

Section 10. Section **31A-26-306** is amended to read:

**31A-26-306. Place of business -- Records.**

(1) (a) ~~[All licensees]~~ An insurance adjuster licensed under this chapter shall:

(i) register with the commissioner the address and telephone [numbers of their] number of the licensee's principal place of business[-If]; and

(ii) if the licensee is an individual, [he shall also] provide [his] the licensee's residence address and telephone number. [Licensees]

(b) A licensee shall notify the commissioner[-in writing,] within 30 days of any change of address or telephone number.

(2) Except as provided under Subsection (3), every insurance adjuster shall keep at the address registered under Subsection (1), a record of all transactions consummated under ~~[his]~~ the insurance adjuster's license, including a record of:

(a) each investigation or adjustment undertaken or consummated[-]; and [a record of]

(b) any fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment.

(3) Subsection (2) is satisfied if the records specified in that subsection can be obtained immediately from a central storage place elsewhere by on-line computer terminals located at

the registered address.

(4) (a) The records maintained as to a transaction under Subsection (2) shall be kept available for the inspection of the commissioner during all business hours for a period of time after the date of the transaction specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding records after the then applicable record retention period is passed does not place the licensee in violation of a later-adopted longer record retention period.

Section 11. Section **31A-35-101** is amended to read:

**31A-35-101. Title.**

This chapter is known as the "Bail Bond [~~Sureties and Agents~~] Act."

Section 12. Section **63-2-302** is amended to read:

**63-2-302. Private records.**

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or

impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63-2-302.5 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a); or

(ii) Subsection 31A-23a-302(3); and

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection

63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection(1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 13. Section **77-20-10** is amended to read:

**77-20-10. Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.**

(1) The court shall order that a defendant who has been found guilty of an offense and

sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:

- (a) the appeal raises a substantial question of law or fact likely to result in:
  - (i) reversal;
  - (ii) an order for a new trial; or
  - (iii) a sentence that does not include a term of imprisonment in jail or prison;
- (b) the appeal is not for the purpose of delay; and

(c) by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

(2) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to conditions that result in the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of any other person and the community. The conditions may include that the defendant:

- (a) post appropriate bail;
- (b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond [Sureties and Agents] Act, in an amount necessary to assure the appearance of the defendant as required;
- (c) (i) execute a written agreement to forfeit, upon failing to appear as required, designated property, including money, as is reasonably necessary to assure the appearance of the defendant; and
  - (ii) post with the court indicia of ownership of the property or a percentage of the money as the court may specify;
- (d) not commit a federal, state, or local crime during the period of release;
- (e) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;
- (f) maintain employment, or if unemployed, actively seek employment;

- (g) maintain or commence an educational program;
  - (h) abide by specified restrictions on personal associations, place of abode, or travel;
  - (i) avoid all contact with the victims of the offense and with any witnesses who testified against the defendant or potential witnesses who may testify concerning the offense if the appeal results in a reversal or an order for a new trial;
  - (j) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other designated agency;
  - (k) comply with a specified curfew;
  - (l) not possess a firearm, destructive device, or other dangerous weapon;
  - (m) not use alcohol, or any narcotic drug or other controlled substances except as prescribed by a licensed medical practitioner;
  - (n) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain under the supervision of or in a specified institution if required for that purpose;
  - (o) return to custody for specified hours following release for employment, schooling, or other limited purposes;
  - (p) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of any other person and the community; and
  - (q) if convicted of committing a sexual offense or an assault or other offense involving violence against a child 17 years of age or younger, is limited or denied access to any location or occupation where children are, including but not limited to:
    - (i) any residence where children are on the premises;
    - (ii) activities, including organized activities, in which children are involved; and
    - (iii) locations where children congregate, or where a reasonable person should know that children congregate.
- (3) The court may, in its discretion, amend an order granting release to impose additional or different conditions of release.



---

**Legislative Review Note**  
**as of 11-19-03 4:12 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**